IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19785 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIRAG JAGDISH AGRAWAL
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for the Petitioner
Mr Neeraj Soni, ASST. GOVERNMENT PLEADER for Respondents

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 08/08/2007

ORAL JUDGMENT

RULE. Mr Neeraj Soni, learned AGP waives service of Rule for the

respondents. At the request of the learned counsel for the parties, the matter is taken up for final hearing today.

The petitioner has challenged order passed by respondent No.1 in revision application dated 6th June 2007 whereby respondent No.1 has confirmed order passed by respondent No.2 dated 12.3.2006 by which respondent No.2 has confirmed the order passed by respondent No.3 dated 26.11.2005.

The allegation against the petitioner is that he is involved in an offence, which is registered as C.R.No.I 106 of 2005 at Mundra Police Station for the alleged commission of offences made punishable under Sections 209 read with Section 120B of the IPC and also under Sections 3 and 7 of the Essential Commodities Act. It is alleged that the petitioner who holds tanker bearing registration No.GJ 12W 7691 illegally procured diesel from other accused of the said case on 26th August 2005. It was found that diesel which is required to be sold to the fishermen of Bhadreshwar in Kutch District at a subsidized rate was being emptied in the aforesaid tanker of the petitioner from tanker No.GJ-12T-9677 instead of being taken to the pump for distribution to the fishermen. In view of the aforesaid lodging of the complaint and the petitioner's involvement in the offence his licence as an authorised dealer of IPB Company Limited has been cancelled. This was done by respondent No.3 by first issuing show-cause notice dated 27.11.2005, which was based on the material collected during the enquiry. It appears that the show-cause notice was issued after the petitioner was detained in judicial custody. In view of the same, the wife of the petitioner, Nilam Agrawal submitted an application which appears to have been received by the authority on 10th November 2005 requesting to furnish copies of the documents referred to in the said application to

enable the petitioner to effectively defend his interest. Subsequently, the case was heard by respondent No.3. It also appears that before the hearing the request made on behalf of the petitioner was not acceded to and the copies were not supplied. Respondent No.3 cancelled the licence and forfeited the deposit amount by his order dated 26.11.2005. Against the said order, the petitioner preferred appeal before respondent No.2. The petitioner during the course of hearing submitted to respondent No.2 that copies of the documents mentioned and relied upon by the authority for issuance of the show-cause notice were requested to be supplied to the petitioner, but that has not been done and therefore the principles of natural justice have been violated. However, respondent No.2 did not accept the said argument and dismissed the appeal by order dated 12.03.2006 and confirmed the order passed by respondent No.3. Against the order of respondent No.2 petitioner preferred revision application before respondent No.1. It appears that the petitioner produced circular issued by the Food and Civil Supplies Department, Government of Gujarat to substantiate his submission that the documents referred to and relied upon by the authority while issuing the show-cause notice were required to be supplied to the petitioner. He also appears to have relied on the judgment of the learned Single Judge of this Court. The order of respondent No.3, however, does not reflect any discussion on this aspect. He dismissed the revision application and confirmed the order passed by respondent No.3. Hence, this petition.

I have heard Mr H.R.Prajapati, learned advocate for the petitioner and Mr Neeraj Soni, learned AGP for the respondent.

According to Mr Prajapati, there is a gross violation of principles of natural justice inasmuch as respondent No.3 has not supplied the documents prayed for on behalf of the petitioner by his wife. He has

further submitted that for want of these documents, the petitioner was not able to effectively defend his case and that has caused serious injustice to the petitioner. As against that, Mr Soni has tried to support the orders passed by the authorities below. I have carefully considered the submissions of the learned counsel for the parties. I have also perused the record of the petition. It is very clear that at the first available opportunity the wife of the petitioner had submitted application requesting for the supply of the documents referred to therein and which were relied on by respondent No.3 for issuance of the show-cause notice and ultimately passing the order of cancellation of licence and authorisation. These documents were very much needed by the petitioner to defend his interest. There is no dispute that these documents have not been supplied to the petitioner. This contention was raised by the petitioner at every stage but that has not been accepted. The circular issued by Food and Civil Supplies Department specifically provides for supply of copies such as panchnama, statements recorded during the enquiry and also record, which was seized during the enquiry along with the show-cause notice. Admittedly, that has not been done. This amounts to violation of principles of natural justice. However, considering the fact that the allegation against the petitioner is quite serious and the first order order was passed on 26.11.2005, there is no need to remand the matter to the first authority. The revisional authority can look into this aspect and give appropriate decision after affording to the petitioner proper opportunity to defend his case after supplying the documents referred to in the application submitted by the wife of the petitioner. Hence, order of respondent No.1 dated 6th June 2007 is quashed and set aside. Matter is remanded to respondent No.1 for his reconsideration. He is directed to furnish copies of the documents referred to in the application submitted by the wife of the petitioner and permit the petitioner to produce the material which, in his opinion, is

relevant for substantiating his case. He may also be granted adequate opportunity of personal hearing to the petitioner or to his authorised representative. Only thereafter respondent No.1 may take appropriate decision strictly in accordance with law as well as facts. Decision to be intimated to the petitioner within 15 days of the decision. The entire process to be completed on or before 31.10.2007. Rule is made absolute to the aforesaid extent with no order as to costs.

(Akshay H Mehta, J.)

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